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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,720	12/28/2001	Earl J. Braxton	NMC104A US	2117

21133 7590 12/28/2004

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EXAMINER	
PHILLIPS, CHARLES E	
ART UNIT	PAPER NUMBER
3751	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/034,720	BRAXTON, EARL J.	
	Examiner	Art Unit	
	Charles E. Phillips	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7-10,12-15 and 17-21* is/are pending in the application.

4a) Of the above claim(s) *4,9,14 and 18-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5,7,8, 10,12,13,15,17 and 21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 5, 7, 8 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The term "longitudinally non-foldable" of claims 1-3, 5, 7 and 8 and "non-foldable planar" of claim 21 are not found in the specification and have not been discussed the 11 pages of remarks by applicant.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 5, 7, 10, 12, 15, 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art for the reasons advanced in the previous office action.

The term referred to supra are deemed met here in that in Dahl no longitudinal folding is depicted of the respective side walls, only latitudinal as depicted in Fig. 4.

The arguments alleging failure to set forth a prima facie case of obviousness are not well taken. The provision of one portable privy with a floor as suggested by another portable privy would be textbook as mandated by the Deere decision.

The various states of folding argued for by applicant are nothing more than intended use states and do not define in this apparatus claim environment. Furthermore, Dahl is capable of attaining any folded state that the instant device can attain.

The sought after motivation to combine Dahl and Lezz et al lies in the fact that both teach knock down type portable privies.

The argument on page 20 regarding "substitute parts of one reference for part of another "is" not well taken in that the proposal here is to provide one portable privy not having a floor, with a floor as taught by another portable privy.

It is clear in the practice that a specific suggestion is not the test for a proper 103 rejection.

With respect to the full paragraph on page 21 of the arguments, attention is directed to the complete paragraph of the rejection from which this argument is taken.

Claim 21 is included here, as it is not separately argued for by applicant.

Regarding claim 12 it as well is not separately argued for. The added term "planar" defines no structure not shown by Dahl in that any side of Dahl is capable of lying in a plane.

The state set forth for claim 17 as set forth previously is attainable by Dahl and the state in which the device is transported is nothing more than intended use, accorded no weight in this article environment.

Claims 3, 8 and 13 rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Braxton '836 as set forth in the previous action.

Claims 4, 9, 14 and 18-20 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/18/02.

Any inquiry concerning this communication should be directed to Charles Phillips at telephone number (571) 272-4893.

Charles E. Phillips
Primary Examiner